

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

ABDERRAHMANE DAHY,)	
)	
Plaintiff,)	Case No. 2:17-cv-1633
)	
v.)	Judge David Stewart Cercone
)	Magistrate Judge Lisa Pupo Lenihan
FEDEX GROUND PACKAGE)	
SYSTEM, INC., <i>et al.</i> ,)	ECF Nos. 20, 47
)	
Defendants.)	
)	

MEMORANDUM ORDER

The Complaint in the above captioned case was received by the Clerk of Court on December 18, 2017, upon removal from the Court of Common Pleas of Allegheny County, Pennsylvania, and was referred to United States Magistrate Judge Lisa Pupo Lenihan for pretrial proceedings in accordance with the Magistrate Judges Act, 28 U.S.C. §636(b)(1), and Local Rules of Court 72.C and 72.D.

The Magistrate Judge's Report and Recommendation (ECF No. 47), filed on August 3, 2018, recommended that the Motion to Dismiss Count II filed by Defendant FedEx Ground Package System, Inc. (ECF No. 20) be granted and Count II, as asserted against FedEx, be dismissed without prejudice. It was further recommended that Plaintiff be granted leave to file an amended complaint, if he so chooses, in accordance with the Report and Recommendation.

Service was made on all counsel of record. In the Report and Recommendation, the parties were informed that in accordance with the Magistrate Judges Act, 28 U.S.C. § 636(b)(1)(B) and (C), and Rule 72.D.2 of the Local Rules of Court, they had fourteen (14) days to file any objections. On August 17, 2018, Plaintiff's counsel filed Objections

to the Report and Recommendation (ECF No. 50). Counsel for FedEx filed a Response to the Objections (ECF No. 52) on August 31, 2018.

After review of the pleadings and documents in the case, together with the Report and Recommendation, the Objections thereto and the Response to the Objections, the following Order is entered:

AND NOW, this 6th day of September, 2018,

IT IS HEREBY ORDERED that the Motion to Dismiss Count II of the Complaint, filed by Defendant FedEx Ground Package System, Inc. (ECF No. 20) is **GRANTED** and Count II is **DISMISSED WITHOUT PREJUDICE**.

IT IS FURTHER ORDERED that Plaintiff shall be allowed to file an amended complaint, in accordance with the Report and Recommendation, on or before October 1, 2018. If Plaintiff does not wish to file an amended complaint, then he shall inform the Court of his intention by that deadline. If Plaintiff informs the Court that he will not be filing an amended complaint, or if nothing is filed by the deadline, the Court will enter an order dismissing Count II with prejudice without further notice to the parties.

IT IS FURTHER ORDERED that the Report and Recommendation (ECF No. 47) of Magistrate Judge Lenihan dated August 3, 2018, is adopted as the opinion of the Court.



David Stewart Cercone
Senior United States District Judge

cc: Craig C. Marchiando, Esquire
James M. Pietz, Esquire
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(Via CM/ECF Electronic Mail)